

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE DIET DRUGS (Phentermine/Fenfluramine/ Dexfenfluramine) PRODUCTS LIABILITY LITIGATION

MDL No. 1203

**SHEILA BROWN et al. v. AMERICAN
HOME PRODUCTS CORPORATION**

CIVIL ACTION NO. 99-20593

CYNTHIA ACOSTA, et al.

V.

CIVIL ACTION NO. 02-20143

**AMERICAN HOME PRODUCTS
CORPORATION, et al.**

**WYETH'S MOTION TO ENFORCE THE SETTLEMENT AGREEMENT AND
PRETRIAL ORDER NO. 1415 AS AGAINST PLAINTIFF CHARLEEN MAR**

Class Member Charleen Mar is a plaintiff in the above-entitled action. Before filing this lawsuit Ms. Mar exercised the “Accelerated Implementation Option” (“AIO”), thereby executing a full release and covenant not to sue. She sued nevertheless. For all the reasons set forth in the accompanying memorandum, Wyeth respectfully moves the Court to enforce the Settlement Agreement and PTO 1415, and dismiss with prejudice all of Charleen Mar’s claims.

RESPECTFULLY SUBMITTED,

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*Attorneys for Defendant
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Dated: May 21, 2004

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE DIET DRUGS
(Phentermine/Fenfluramine/
Dexfenfluramine) PRODUCTS
LIABILITY LITIGATION**

MDL No. 1203

**SHEILA BROWN et al. v. AMERICAN
HOME PRODUCTS CORPORATION**

CIVIL ACTION NO. 99-20593

CYNTHIA ACOSTA, et al.

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CIVIL ACTION NO. 02-20143

**AMERICAN HOME PRODUCTS
CORPORATION, et al.**

**WYETH'S MEMORANDUM IN SUPPORT OF ITS MOTION TO ENFORCE
THE SETTLEMENT AGREEMENT AND PRETRIAL ORDER NO. 1415 AS
AGAINST PLAINTIFF CHARLEEN MAR**

Defendant Wyeth moves this Court to dismiss with prejudice the claims of Class Member Charleen Mar, plaintiff in the lawsuit styled *Cynthia Acosta, et al. v. AHPC, et al.* C.A. No. 02-20143.

FACTS

Charleen Mar purports to have exercised intermediate opt-out rights and is suing Wyeth in the *Acosta* matter. Her complaint caption is attached as Exhibit A. The case is pending in the MDL. Ms. Mar is a member of the *Brown* Class and is subject to this Court's jurisdiction. *See* Pretrial Order ("PTO") 1415, at ¶¶ 3, 11.

Charleen Mar's claims are settled pursuant to the Accelerated Implementation Option ("AIO") and she is consequently barred from prosecuting claims against any defendant in the diet drug litigation. She signed her "Pink Form" on February 23, 2000, attached as Exhibit B, and sent it to the Claims Administrators. The Settlement Agreement and PTO 1415 require her dismissal.

ARGUMENT

The explicit terms of Ms. Mar's AIO agreement require dismissal of her claim against Wyeth. By signing the Pink Form Ms. Mar executed a full release and covenant not to sue.

I fully, finally and forever settle and release any and all Settled Claims, including assigned claims, whether known or unknown, asserted or unasserted, regardless of the legal theory, existing now or arising in the future out of or relating to the purchase, use, manufacture, sale, dispensation, distribution, promotion, marketing, clinical investigation, administration, regulatory approval, prescription, ingestion, and labeling of Pondimin® and/or Redux™, alone or in combination with any other substance, including, without limitation, any other drug, dietary supplement, herb, or botanical that I may have against any Released Party.

"Pink Form," at 9. The terms of the AIO agreement – and of the Settlement Agreement – could not be any clearer. Wyeth has asked for Ms. Mar's dismissal but its correspondence has been ignored. The letter sent to Plaintiff's counsel is attached as Exhibit C. Tom Pirtle also told this Court that he would dismiss her claim 6 months ago. Though Ms. Mar's name was not used, at the November 19, 2003 status conference the following exchange occurred:

THE COURT: WHAT ABOUT THE ONE, THAT
IS AN AIO CASE?

MR. PIRTLE: WE WILL DISMISS THE AIO
CASE.

Tr., at 13. He has not. There is no legitimate justification for counsel's refusal to dismiss
Ms. Mar's claims as required by the plain terms of the Settlement Agreement.

CONCLUSION

For all the reasons set forth herein, Wyeth's Motion to Enforce the Settlement
Agreement and Pretrial Order No. 1415 as Against Plaintiff Charleen Mar should be
granted.

Respectfully submitted,

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*Attorneys for Defendant
Wyeth*

Dated: May 21, 2004

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**AMERICAN HOME PRODUCTS
CORPORATION, et al.**

PRETRIAL ORDER NO. _____

AND NOW, this ____ day of _____, 2004, upon consideration of Wyeth's Motion to Enforce the Settlement Agreement and Pretrial Order No. 1415 as Against Plaintiff Charleen Mar, it is hereby ORDERED that the motion is GRANTED and Plaintiff's claims are DISMISSED with prejudice and without costs to all named Defendants.

BY:

Harvey Bartle, III, J.

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of May, 2004, a true and correct copy of the foregoing Motion to Enforce the Settlement Agreement and Pretrial Order No. 1415 as Against Plaintiff Charleen Mar was served on all counsel of record in this matter by Federal Express, and all persons to whom service is required under PTO 19 by first-class, United States mail.

/S/ Michael A. Rollin